

**Application No.: 10/628,847**  
**Filing Date: July 28, 2003**

## **REMARKS**

In response to the final Office Action mailed March 18, 2008, the Applicants respectfully request the Examiner to reconsider the above-captioned application in view of the foregoing amendments and the following remarks.

### ***Summary of the Office Action***

In the March 18, 2008 final Office Action, Claims 14-54 stand rejected. Claims 14-21 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,769,767 issued to Swab et al. (hereinafter “Swab”) in view of U.S. Patent No. 5,654,786 issued to Bylander (hereinafter “Bylander”). Claims 22-54 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Swab in view of U.S. Patent No. 4,149,780 issued to Young (hereinafter “Young”), further in view of U.S. Patent No. 5,606,743 issued to Vogt et al. (hereinafter “Vogt”).

### ***Summary of the Amendment***

Upon entry of this amendment, Applicants will have amended Claims 14-17, 19-22, 27, 29-32, 37-38, and 51-54, canceled Claims 33-34, 36 and 40, and added new Claims 55-61. Accordingly, Claims 14-32, 35, 37-39, and 41-67 currently remain pending. By this amendment, the Applicants respond to the Examiner’s comments and rejections made in the March 18, 2008 Final Office Action. Applicants respectfully submit that the present application is in condition for allowance.

### ***Traversal of Rejection under 35 U.S.C. § 103(a)***

#### **In re Claims 14-21**

In the Office Action, Claims 14-21 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Swab in view of Bylander. While Applicants reserve the right to prosecute these claims as originally filed, Applicants have amended Claim 14 in order to expedite prosecution of this Application. Accordingly, Applicants respectfully request that the rejection of Claim 14, as well as Claims 15-21 be withdrawn and that these claims be indicated as allowable over the art of record.

Swab teaches eyewear that can be used to form a wireless ad hoc network with devices such as a computer, bracelet, and telephone. *See* Swab, col. 3, line 66-col. 4, line 11. Swab indicates that the eyewear is intended to be “low-cost, small in size, and [have] a low power consumption.” *Id.* at col. 1, lines 63-64 (emphasis added). It is notable that Swab never once describes the lenses used in its eyewear, and never even uses the word “lens.” Indeed, Swab’s closest reference to anything light-related is made in the Background of the Invention section, where Swab refers to a prior art personal display device as having the “shape of sunglasses.” *Id.* at col. 1, lines 46-48. Swab is similarly devoid of any teachings or disclosure related to video display technology that interacts with variable light attenuation of the lens. Applicants submit that Swab’s teachings are completely focused only on low-cost, low power wireless communication eyewear that can form an ad hoc wireless network with other electronic devices.

In contrast to Swab, Bylander is focused on controlling the optical transmissivity of eyewear to create a medically-significant result, but does not teach any interaction with electronic audio or video devices. For example, Bylander indicates that

Continuous control of optical transmissivity across a broad range of magnitudes is particularly desirable in many medical applications such as diagnosis and treatment of retinal disease, visual field abnormalities known a[s] scotomas, optic neuropathy, macular degeneration, and the like. Diagnosis of these conditions can be problematic using uncontrolled ambient light since the magnitude of the symptoms of these diseases can vary with ambient light levels.

For patients suffering from retinal diseases, sudden changes in ambient light levels, such as emerging from a dimly lit room into a bright sunny day, and vice versa, can cause serious problems and momentary blindness. It would be desirable to maintain these patients in a partially dark adapted state. This partially dark adapted state would involve maintaining a constant light level at the patients eyes despite variations in ambient light levels.

Bylander, col. 1, lines 19-35 (emphasis added). Thus, Bylander teaches lens structures that are configured to continuously control the optical transmissivity of light passing therethrough independently of ambient light levels. *See id.* at col. 1. Additionally, the lens structures taught by Bylander require additional power in order to vary the light transmissivity of the lenses.

In contrast to the teachings of Swab and Bylander, Claim 14 recites, *inter alia*, a “lens configured to have electronic variable light attenuation” and a “video unit being supported by the frame . . . [and] being viewable by the user of the eyeglass with the variable light attenuation of the lens being adjustable to permit a desired amount of visible light to pass through the lens in

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response to the electronic control signal.” Applicants respectfully submit that neither Swab nor Bylander suggest, disclose or otherwise teach at least these features of the eyeglass of Claim 14.

Further, these features recited in Claim 14 provide for an eyeglass that is a significant enhancement over the prior art. These novel features are important because ambient light passing through the lens of an eyeglass and into a user’s eyes makes it very difficult for the user of the eyeglass to visually perceive an image from a heads-up display unit. Thus, the eyeglass of Claim 14 allows the amount of light entering the user’s eye to be reduced in order to enhance viewing of the image from the video unit.

Prior art eyewear is designed to allow light to pass through the lens and into the eye of the wearer. However, this light decreases the contrast of a video image and causes the image to be faded or washed out. As a result, it is exceedingly difficult for the wearer of prior art eyewear to visually perceive a rich, high-contrast image from the heads-up display unit. Therefore, in order to improve the functionality and visibility of the video unit, Claim 14 provides an eyeglass that has a uniquely configured light-attenuation lens assembly used with the video unit. This unique eyeglass product allows the amount of visible light passing through the lens to be reduced via light attenuation so that the user can easily see a rich, high-contrast image from the video unit. This truly represents a significant and meaningful advance over the references, which do not even suggest or contemplate such a feature or capability. Indeed, these advantages are a tremendous enhancement for heads-up display technology.

Accordingly, Applicants respectfully request that the Examiner indicate the allowability of Claim 14, as well as Claims 15-21, 30-31, 35, 51-52, and 55-56, based on their own merit and for at least the reason that these claims depend from an allowable independent base claim, Claim 14.

*In re Claims 22-54*

In addition, Claims 22-54 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Swab in view of Young, further in view Vogt. While Applicants reserve the right to prosecute these claims as originally filed, Applicants have amended Claims 22 and 38 in order to expedite prosecution of this Application. Accordingly, Applicants respectfully request that the rejection of Claims 22 and 38, as well as Claims 23-32, 37, 39, and 41-54 be withdrawn and that these claims be indicated as allowable over the art of record.

As discussed above, Swab is devoid of any teaching related to video display technology that interacts with variable light attenuation of the lens. Young is similarly lacking. In fact, Young merely teaches variable density spectacles having a pair of superposed iodine stained light polarizing elements. Young is dedicated to the precise formulations and configurations of the lens, and does not once suggest that electronics can be used with its disclosed spectacles. Further, Vogt is directed to eyewear that can incorporate various electronic audio equipment. However, Vogt is similarly devoid of any teaching or disclosure related to video display technology that interacts with variable light attenuation of the lens.

In contrast to the teachings of Swab, Vogt, and Young, Claim 22 recites, *inter alia*, a “first lens comprising a video unit and having variable light attenuation, the video unit being in electrical communication with the audio device, the video unit being viewable by a wearer of the eyeglass with the light attenuation of the lens permitting a desired amount of light to pass through the lens toward an eye of the wearer of the eyeglass.”

Further, Claim 38 recites, *inter alia*, a “lens comprising at least one variable light attenuation assembly configured to change its attenuation of visible light in accordance with an electronic control signal” and a “video unit being viewable by the user of the eyeglass with the light attenuation of the lens permitting a desired amount of light to pass through the lens toward an eye of the wearer of the eyeglass.” Applicants respectfully submit that none of Swab, Vogt, or Young disclose or otherwise teach at least these features of Claims 22 and 38.

Further, similar to Claim 14 above, these features recited in Claims 22 and 38 provide for an eyeglass that is a significant enhancement over the prior art. These novel features are important because ambient light passing through the lens of an eyeglass and into a user’s eyes makes it very difficult for the user of the eyeglass to visually perceive an image from a heads-up display unit. Thus, the eyeglasses of Claims 22 and 38 allow the amount of light entering the user’s eye to be reduced in order to enhance viewing of the image from the video unit.

As discussed above, prior art eyewear is designed to allow light to pass through the lens and into the eye of the wearer. However, this light decreases the contrast of a video image and causes the image to be faded or washed out. As a result, it is exceedingly difficult for the wearer of prior art eyewear to visually perceive a rich, high-contrast image from the heads-up display unit. Therefore, in order to improve the functionality and visibility of the video unit, Claims 22

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and 38 provide eyeglasses that have a uniquely configured light-attenuation lens assembly used with the video unit. These unique eyeglass products allow the amount of visible light passing through the lens to be reduced via light attenuation so that the user can easily see a rich, high-contrast image from the video unit. This truly represents a significant and meaningful advance over the references, which do not even suggest or contemplate such a feature or capability. Indeed, these advantages are a tremendous enhancement for heads-up display technology.

Accordingly, Applicants respectfully request that the Examiner indicate the allowability of Claims 22 and 38, as well as Claims 23-32, 37, 39, and 41-54, based on their own merit and for at least the reason that these claims depend from allowable independent base claims, Claims 22 and 38.

***New Claims 55-67***

Applicants hereby submit new Claims 55-67 for consideration. These claims recite further features of independent Claims 14, 22, and 38 and should be allowable on their own merit and for at least the reason that they depend from allowable independent base claims. Therefore, Applicants respectfully request that the Examiner indicate the allowability of Claims 55-67.

***No Disclaimers or Disavowals***

Although the present communication may include alterations to the application or claims, or characterizations of claim scope or referenced art, the Applicants are not conceding in this application that previously pending claims are not patentable over the cited references. Rather, any alterations or characterizations are being made to facilitate expeditious prosecution of this application. The Applicants reserve the right to pursue at a later date any previously pending or other broader or narrower claims that capture any subject matter supported by the present disclosure, including subject matter found to be specifically disclaimed herein or by any prior prosecution. Accordingly, reviewers of this or any parent, child or related prosecution history shall not reasonably infer that the Applicants have made any disclaimers or disavowals of any subject matter supported by the present application.

***Co-Pending Applications of Assignee***

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Applicants wish to draw the Examiner's attention to the following co-pending applications of the present application's assignee.

<b>Serial Number</b>	<b>Title</b>	<b>Filed</b>	<b>Atty Docket No.</b>
10/628,695	WIRELESS INTERACTIVE HEADSET	28 July 2003	NOCODE2.005A
10/963,290	ACTUATOR CONFIGURATION FOR EYEGLASS WITH MP3 PLAYER	10-12-2004	NOCODE2.5C1DV2
11/417,854	ELECTRONIC EYEWEAR WITH HANDS-FREE OPERATION	05-03-2006	NOCODE2.5C3DV1
11/869,704	WIRELESS INTERACTIVE HEADSET	11-09-2007	NOCODE2.5CP2C1
11/022,367	DATA INPUT MANAGEMENT SYSTEM FOR WEARABLE ELECTRONICALLY ENABLED INTERFACE	12-22-2004	NOCODE2.007A
11/418,160	EYEGLASS WITH MP3 PLAYER	05-03-2006	OAKLY1.172C3
11/418,154	EYEGLASSES WITH WIRELESS COMMUNICATION FEATURES	05-03-2006	OAKLY1.278C2
11/352,938	EYEWEAR WITH DETACHABLE MODULE	02-13-2006	OAKLY1.271A

Copies of the patents, applications, and pending claims, including any office actions and allowances, are available through PAIR. However, if the Examiner so requests, Applicants will be happy to provide the Examiner with copies of any patents, applications, pending claims, office actions, allowances, or any other documents, at any time.

Further, Applicants note for the record that the claims of the present application are different and may be broader in scope than the claims in any related patent or application. To the extent that any statements made in a related case (such as amendments or characterizations regarding the scope of a claim or prior art) could be construed as a disclaimer of any subject matter supported by the present disclosure, Applicants rescind and retracts such disclaimer. Accordingly, any listed or referenced prior art may need to be re-visited. Further, any objections or rejections made by the Examiner in the issued and allowed cases identified above may need to be re-visited.

Claims canceled in this application are done so without prejudice. Applicants are not conceding that the previously pending claims are not patentable over the art of record. Applicants reserve the right to later pursue any previously pending or other broader or narrower claims that capture any subject matter supported by the present disclosure, including subject matter found to

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be specifically disclaimed herein or by any prior prosecution. Accordingly, reviewers of this or any parent, child or related prosecution history shall not reasonably infer that the Applicants have made any disclaimers or disavowals of any subject matter supported by the present application.

## **CONCLUSION**

Applicants respectfully submit that the above rejections and objections have been overcome and that the present application is now in condition for allowance. Therefore, the Applicants respectfully request that the Examiner indicate that Claims 14-32, 35, 37-39, and 41-67 are now acceptable and allowed. Accordingly, early issuance of a Notice of Allowance is most earnestly solicited.

Applicants respectfully submit that the claims are in condition for allowance in view of the above remarks. Any remarks in support of patentability of one claim, however, should not be imputed to any other claim, even if similar terminology is used. Additionally, any remarks referring to only a portion of a claim should not be understood to base patentability on that portion; rather, patentability must rest on each claim taken as a whole. Applicants respectfully traverse each of the Examiner's rejections and each of the Examiner's assertions regarding what the prior art shows or teaches, even if not expressly discussed herein. Although amendments have been made, no acquiescence or estoppel is or should be implied thereby. Rather, the amendments are made only to expedite prosecution of the present application, and without prejudice to presentation or assertion, in the future, of claims on the subject matter affected thereby. Applicants also have not presented arguments concerning whether the applied references can be properly combined in view of, among other things, the clearly missing elements noted above, and Applicants reserve the right to later contest whether a proper reason exists to combine these references and to submit indicia of the non-obviousness of the claimed management system.

The undersigned has made a good faith effort to respond to all of the rejections in the case and to place the claim and drawings in condition for immediate allowance. Nevertheless, if any undeveloped issues remain or if any issues require clarification, the Examiner is respectfully requested to call the Applicants' attorney in order to resolve such issue promptly.

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

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Respectfully submitted,

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